

§ 248.9

17 CFR Ch. II (4–1–12 Edition)

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 248.9.

§ 248.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices that this subpart requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of

your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* (1) You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(i) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(ii) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(2) *Example of reasonable expectation of receipt of annual privacy notice.* You may reasonably expect that consumers who share an address will receive actual notice of your annual privacy notice if you deliver the notice with or in a stockholder or shareholder report under the conditions in 17 CFR 270.30d-1(f) or 17 CFR 270.30d-2(b), or with or in a prospectus under the conditions in 17 CFR 230.154.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this subpart solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by § 248.4(a)(1), the annual notice required by § 248.5(a), and the revised notice required by § 248.8, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.

(f) *Joint notice with other financial institutions.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to you and the other institutions.

(g) *Joint relationships.* If two or more consumers jointly obtain a financial product or service from you, you may satisfy the initial, annual, and revised notice requirements of paragraph (a) of this section by providing one notice to those consumers jointly.

LIMITS ON DISCLOSURES

§ 248.10 Limits on disclosure of non-public personal information to non-affiliated third parties.

(a)(1) *Conditions for disclosure.* Except as otherwise authorized in this subpart, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 248.4;

(ii) You have provided to the consumer an opt out notice as required in § 248.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the non-affiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a non-affiliated third party, other than as permitted by §§ 248.13, 248.14, and 248.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form,

calling a toll-free telephone number, or any other reasonable means within 30 days after the date you mailed the notices.

(ii) *By electronic means.* A customer opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you allow the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the provision of brokerage services to a consumer as an accommodation, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a customer relationship.

(2) Unless you comply with this section, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain non-affiliated third parties with respect to which the consumer wishes to opt out.

§ 248.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 248.14 or 248.15, your disclosure and use of that information is limited as follows: